MICHIGAN DOMESTIC VIOLENCE PREVENTION AND TREATMENT BOARD

MEETING MINUTES
May 20, 2005

*** *** APPROVED – September 27, 2005 ***

Members Present:

Honorable Amy Krause, Chair
Shirley Mann Gray
Mary Beth Kur
Lore Rogers
Honorable Edward Sosnick

Staff Present:

Michelle Bynum
Debi Cain, Executive Director
Deb Felder-Smith
Carol Hackett Garagiola
Josie Jubb
Mary Lovik
Karen Porter

Guests:

Patrice Eller, FIA, Adult and Family Services
Kathy Hagenian, MCADSV
Judy Karandjeff, MI Women's Commission
Angie Noriega, Saginaw Chippewa Indian Tribe
Leslie O'Reilly, VOCA
Bethany Andorfer, MI Women's Commission
Lacie Tuller, Saginaw Chippewa Indian Tribe

Welcome and Introductions

The May 20, 2005 Michigan Domestic Violence Prevention and Treatment Board (MDVPTB) meeting at the DHS, Grand Tower Building in Lansing, MI, convened at 10:10 a.m. Introductions were made and a welcome extended to guests.

BOARD CONSENT

Review of agenda, approval of February 11, 2005 Board meeting minutes.

MOTION: Moved by M. Beth Kur to amend agenda items V and IV to proceed in that order. Seconded by L. Rogers. Motion carried.

MOTION: Moved by L. Rogers to approve the May 20, 2005 agenda and approve the February 11, 2005 meeting minutes. Seconded by M. Beth Kur. Motion carried.

CHAIR'S REPORT

Chair A. Krause reported the Director's Legislative work group has been very busy working on pending legislation, giving feedback to staff, and working on MDVPTB's Guiding Principles. The Governance Committee will be meeting in preparation regarding the September Board Retreat agenda and activities.

The Governance Process and Policy Review:
Board Member's Code of Conduct; Executive Director Role; Delegation to the Executive Director; Executive Director Job Description; and Monitoring Executive Performance

Chair A. Krause wanted to disclose on record that her husband Kurt Krause received a position as Assistant Legal Director of Community Mental Health. L. Rogers disclosed that she's been doing training for MCOLES, grant regional training through out the state through MCOLES STOP grant fund. D. Cain will run both past the appointment office to make sure there is not a conflict of interest.

Board stated D. Cain does a great job. P. Eller commented that Debi is outstanding, knowledgeable, and easy to work with.

The Board reviewed the policies. No motion required.

Executive Limitations:
Asset Protection; Financial Condition; and Emergency Executive Director Succession

The Board reviewed and approved D. Cain's Executive Limitations reports.

MOTION: Moved by E. Sosnick to accept Executive Limitation Reports: Asset Protection, Financial Condition; and Emergency Executive Director Succession. Seconded by L. Rogers. Motion carried.

3rd quarter draft revisions for the Executive Limitations Asset Protection and Emergency Executive Director Succession to reflect positive language were reviewed.

MOTION: Moved by L. Rogers to accept draft language to Executive Limitation Reports: Asset Protection and Emergency Executive Director Succession. Seconded by M. Beth Kur. Motion carried.

EXECUTIVE DIRECTOR'S REPORT – GENERAL OVERVIEW OF WORK TO DATE

New Initiatives/Project Updates:

D. Cain reported that we are finishing up completed contracts on the Migrant Project. Five (5) pilot initiative projects will provide domestic violence information to women in migrant farmer camps. Martha Cortez from Migrant Farm Workers at DHS has been instrumental in this project and Mary Scoblik at DCH located the funding to assist with this. Special note that contract staff analyst J. Giddings had responsibility of writing 5 new contracts and contract staff analyst P. Baker in getting interagency and coding correct; they both did a wonderful job with very little notice.

There have been 2 major initiatives with the Department of Corrections. The first is we have continued to do some work with the prisoner re-entry and try to provide our expertise about the realities from a victim's perspective of the perpetrator reentering into the community. We've had several opportunities to sit on committees. The other project is on rape of male prisoners. DOC got a $1.2 million dollar federal grant. The

ultimate goal is to have training provided for male correction officers. There will be a review of sexual assaults that have occurred in the men's prisons and we will participate in that review.

D. Cain asked Leslie O'Reilly to the meeting today because there are some key reauthorizations that are up in Congress. The Victims of Crime Act is critically important to all of the domestic violence and sexual assault programs. VOCA dollars accrue from fines and fees that are assessed against those convicted of crimes. Congress is looking at rescinding accrued dollars ($12-14 million dollars could be lost from Michigan).

MOTION: Moved by E. Sosnick to support the continuation of VOCA dollars to be used as they were intended to be used by Congress. Also to have MDVPTB send a letter to the Crime Victims Commission of Michigan stating that MDVPTB is mandated to look at services to victims of domestic and sexual violence and understands the critical importance of VOCA dollars. Seconded by M. Beth Kur. Motion carried.

D. Cain reported staff are in process of amending contracts for 1-2 years. Contract and Quality Assurance staff have done a huge amount of work as have the grantees in submitting renewal applications.

Legislative Report:

Chair A. Krause gave an overview of legislation to be reviewed and discussed.

M. Lovik presented a summary of **HB 4652** (see staff report dated 5/11/05). This bill would amend the criminal sexual conduct 1-4 offenses that are now applicable to victims age 13-16, changing the age range from at least 13 to less than 18. The amended provisions would not apply to situations where the "victim" is emancipated or married to the "actor"

Concerns noted: This bill potentially could result in the imposition of criminal penalties on consensual contact between teenagers. Prosecution of such cases would divert scarce resources from other, more serious cases. Also, the exemption for situations where the "victim" is emancipated or married to the "actor" potentially conflicts with the spousal rape provisions of MCL 750.520l.

MOTION: Moved by S. Mann Gray to oppose HB 4652. Seconded by L. Rogers. Motion carried.

C. Hackett Garagiola presented a summary of **HB 4431,** which would amend MCL 750.316(1)(b), the "felony murder" statute. (See staff report dated 5/13/05). Currently that statue provides that murder committed in the perpetration of, or attempt to perpetrate, listed felonies constitutes first degree murder, punishable by imprisonment for life. Felonies listed in the current law include: arson; criminal sexual conduct 1st, 2nd or 3rd degree; child abuse 1st degree; a major controlled substance offense; robbery; carjacking; breaking and entering of a dwelling; home invasion 1st or 2nd degree; larceny of any kind; extortion; kidnapping; vulnerable adult abuse 1st or 2nd degree. HB 4431 would amend MCL 750.316(1)(b) to add the following to that list of felonies:

- aggravated stalking,
- PPO violation,
- bond violation, or
- parole violation.

Concerns noted: The Board concurred in the concerns raised in the 5/13/05 staff analysis.

MOTION: Moved by E. Sosnick to support the bill with recommended changes as follows:

a) Add aggravated stalking to the felonies listed in MCL 750.316(1)(b).

b) Limit applicability of statute to PPO, bond order and parole order violations in which the

murder victim was the person protected under that order.

c) **Specify that a petitioner protected by a PPO issued against the respondent shall not be held responsible for the respondent's violation that PPO.**
d) **Specify that a person protected by a bond order or parole order issued against the defendant shall not be held responsible for defendant's violation of that bond or parole order.**
e) **Specify that MCL 750.316(1)(b) shall not be used to charge a person who is the petitioner in the PPO that respondent violates, or a person who is protected by the bond or parole order that the defendant violates.**
f) **Limit to *protective* conditions the conditions of the PPO, bond order, or parole order that trigger application of MCL 750.136(1)(b) first degree murder. That is, provide that only violations or attempted violations of protective conditions (such as restrictions on contact with or proximity to named persons, or prohibitions against entry onto premises) would elevate murder to first degree murder.**
g) **Include probation orders, along with PPOs, bond orders and parole orders, with the same limitations noted in b)-f) above.**

Seconded by L. Rogers. Motion carried.

M. Lovik presented a summary of **HB 4161** (see staff reports dated 5/11/05 and 2/22/05). As introduced, this bill would have repealed the presumption in the Acknowledgment of Parentage Act (MCL 722.1006) that the mother is presumed to have custody of a child born out of wedlock after the parents sign an acknowledgment of paternity, unless otherwise determined by the court or otherwise agreed upon by the parties in writing. The H-2 substitute for this bill seeks to clarify the current law, by assigning initial custody of the child to the mother and providing that after signing an acknowledgement of paternity, the father has the right to seek a child custody determination. An alternative to the H-2 substitute has also been proposed, which would make provision for a child's release from the hospital after a mother and father sign an acknowledgment of parentage without specifying which parent had custody of the child.

Concerns and comments noted:

1) The parents' "right" to possess the child should not be more important than the child's best interests. Amendments to the acknowledgment of parentage act should not put newborns and small children at risk of abduction, impede their access to health care and other essential services, or create opportunities for abuse perpetrators to use them as tools to control their intimate partners.
2) As drafted, the H-2 substitute is subject to differing interpretations by reasonable people and could be interpreted to lower the burden of proof required to change custody from mothers providing an established custodial environment for their children. The Michigan Legislature has provided a clear and convincing standard of proof in these cases to protect the stability of children, and lowering the standard of proof would undo this policy decision.
3) In cases of parental (i.e., maternal) unfitness, Children's Protective Services could intervene to protect the child. In these proceedings, the father must be given notice (see MCR 3.903(A)(7), 3.920(B)(1)(B)-(C), 3.921(B)(1)-(C).)
4) Neither current law nor the H-2 substitute for the bill as drafted address situations where an out-of-wedlock child needs consent to receive medical care and the mother is not able to give consent.

MOTION: Moved by M. Beth Kur to oppose the proposed alternate language for the H-2 substitute for HB 4161. Oppose the H-2 substitute for HB 4161 unless it is amended; remain neutral if amended. Amendments are as follows:

a) **Specify that initial legal and physical custody of the child is with the mother.**
b) **Specify that the initial assignment of initial legal and physical custody to the mother is "without prejudice to the right of either parent to seek a judicial determination of custodial rights."**

Seconded by L. Rogers. Motion carried.

M. Lovik presented a summary of **HB4588** (see staff report dated 4/27/05). This bill would amend numerous sections of the crime victim rights act as described in the staff report.

Comments: This bill closes some gaps in a crime victim's ability to obtain information about the whereabouts of the defendant and the status of the criminal proceedings. It strengthens the mechanisms for collecting restitution for crime victims.

MOTION: Moved by M. Beth Kur to support HB 4588. Seconded by E. Sosnick. Motion carried.

C. Hackett Garagiola presented a summary of **HB4069** (see staff report of 3/10/05). HB 4069 amends MCL 750.479 to provide that a person who knowingly gives false or misleading information to a peace officer in the performance of his or her duties as a peace officer, knowing the information is false or misleading, is guilty of a felony punishable by two years' imprisonment and/or $2,000.Other provisions of MCL 750.479 increase the penalty for the violation to 4 years and/or $5,000 if the "violation" causes bodily injury requiring medical attention to "a person described in this section;" 10 years and/or $10,000 if the "violation" causes serious impairment of a body function of "an individual described in this section;" and 20 years and/or $20,000 if the "violation" causes the death of "an individual described in this section."

Persons/individuals "described in the section" include medical examiner; township treasurer; judge; magistrate; probation officer; prosecutor; city attorney; court employee; court officer; any officer or authorized person serving or executing any process, rule, or order made by lawful authority or otherwise acting in the performance of his or her duties; officer enforcing ordinances, rules, orders or resolutions of city, village or township boards or councils; and peace officers.

Comments and concerns:

a) This bill is likely to result in criminal prosecution of victims of domestic violence and sexual assault who for safety or other reasons choose not to provide information to police about crimes against them, or who "recant" after making a report of a crime.
b) Existing laws governing perjury and false police reports already address the problem of false information given to peace officers.

MOTION: Moved by M. Beth Kur to oppose HB 4069 with the foregoing explanation of the board's comments and concerns. Seconded by S. Mann Gray. Motion carried.

Discussion of **HB 4738**, which would amend the definition of criminal child abuse 2-4 in MCL 750.136b. There is no written staff report at this time. Staff will confer with board members and invited guests (Kathy Hagenian, Ron Hicks were suggested) in 2 groups by way of conference call. Also to be included are **HB 4038** (require presence of adult in interview with child during investigation under Child Protection Law) and **HB 4420** (amending the definition of "severe physical injury" that triggers mandatory petition and law enforcement intervention under Child Protection Law.) Tabled further discussion until next meeting.

C. Hackett Garagiola presented a summary of **HB 4654** (see staff report of 5/16/05). HB 4654 codifies a basic principle of common law self defense, by providing that it is a defense to a prosecution for any crime involving the use or attempted use of deadly force that the person acted in lawful self-defense or lawful defense of another person. HB 4654 also codifies the common law "Castle Doctrine," by providing that the duty to retreat before using deadly force does not apply to any premises in which the person is dwelling. However, HB 4654 changes the common law "Castle Doctrine", by extending it to include the curtilage of a dwelling. HB 4654 provides that the duty to retreat before using deadly force does not apply to any premises in which the person is dwelling or to the curtilage of those premises.

Comments and concerns: HB 4654 provides in part that "It is a defense to a prosecution for any crime involving the use or attempted use of *deadly* force that the person acted in lawful self defense or lawful defense of another person." This codification is narrower than the common law self defense principle, which extends to any crime involving the use or attempted use of *deadly force or non-deadly force*. The danger of this narrower codification is that it could create confusion about whether the legislature intended HB 4654 to limit common law self defense principles to situations in which a person uses deadly force. Many domestic violence victims who use force in self-defense are not using deadly force. Some domestic violence victims who use non-deadly force in self defense are arrested and prosecuted because law enforcement officers did not thoroughly investigate to determine whether the domestic violence victims acted in lawful self defense, and/or law enforcement officers and prosecutors are not properly applying self defense law to those cases. For these domestic violence victims it is critically important that law enforcement officers, prosecutors and courts are very clear that it is a defense to a prosecution for any crime involving the use or attempted use of *deadly force or non-deadly force* that the person acted in lawful self defense or lawful defense of another person. It is possible that because of the incomplete codification of the general principle of self defense (i.e. HB 4654 addresses only *deadly* force situations) HB 4654 might create some confusion about the existence and scope of self defense law in cases in which domestic violence victims (or anyone) use(s) non-deadly force in self defense.

Similarly, HB 4654, by its terms, limits the Castle Doctrine no-duty-to-retreat-rule to the use of deadly force. Under MI common law a person does not have a duty to retreat in her/his own dwelling before using deadly force. Also under common law, however, a person has no duty to retreat before using *non-deadly* force in self defense, regardless of where the person who uses the non-deadly force is located. Therefore, under MI common law, a person has no duty to retreat in his/her home before using *non-deadly* force. It is possible that the codification in HB 4654 of the Castle Doctrine no-duty-to-retreat-rule could create confusion about whether a person has a duty to retreat in his/her home (or its curtilage) before using non-deadly force.

Extending the "Castle Doctrine" beyond the dwelling to include the dwelling curtilage, as provided in HB 4654, would be helpful to a domestic violence victim asserting a claim of self-defense when she used deadly force against her abuser in the yard of her home. The Castle Doctrine provides that a person who is attacked in her/his own dwelling, has no duty to retreat. The Castle Doctrine permits one who is within his/her dwelling to use deadly force even if an avenue of safe retreat is available, as long as it otherwise appears (immediately) necessary to use deadly force. HB 4654 extends that no-duty-to-retreat-rule to the yard of the attacked person's home. So, under HB 4654, the domestic violence victim who is attacked in her home *or her yard*, would not have a duty to retreat before using deadly force.

The Board discussed that most battering takes place "behind closed doors," within the dwelling. Extending the Castle Doctrine to the curtilage/yard probably will not make much of a difference in the lives of most domestic violence victims. Discussion that Common law already does not impose a duty to retreat upon a person who uses non-deadly force in self defense, and many domestic violence victims acting in self defense are using non-deadly force. Therefore, the extension of the Castle Doctrine to the curtilage/yard has no effect on these domestic violence victims who are using non-deadly force in self defense since they already have no duty to retreat before using non-deadly force in self-defense when they are in their yards.

MOTION: Moved by L. Rogers to oppose HB 4654 as written, but withdraw opposition if amended as follows:

a) **"It is a defense to the prosecution for any crime involving the use or attempted use of deadly OR NON-DEADLY force that the person acted in lawful self-defense or lawful defense of another person. The duty to retreat before using deadly force does not apply to any premises in which the person is dwelling or to the curtilage of those premises."**
b) **Add the following: "THERE IS NO DUTY TO RETREAT BEFORE USING NON-DEADLY**

FORCE IN SELF DEFENSE."
Seconded by M. Beth Kur. Motion carried.

M. Lovik presented a summary of **HB 4246** and **HB 4247** (see staff report dated 4/22/05). These bills would prohibit health maintenance organizations, private health insurers, and health care corporations from providing coverage for elective abortions except by way of optional riders for which the insured has paid an additional premium. This restriction would take affect for contracts or certificates issued or renewed on or after 1/1/06.

Excluded from the definition of "elective abortions" are:

- procedures to increase probability of live birth
- procedures to preserve the life/health of a child after live birth
- procedures to remove dead fetus
- prescription/use of contraceptive drugs/devices
- procedures to terminate pregnancy if, in the physician's reasonable judgment, doing so is required to avert the death of the pregnant woman.

Concerns and comments: The foregoing excluded procedures could be covered by insurance without the necessity of an optional rider under these bills. These exclusions do not encompass abortions performed when the pregnancy is a result of a sexual assault or incest. Accordingly, a sexual assault or incest survivor could not have private insurance coverage for an abortion performed in the wake of an assault unless she (or the purchaser of coverage for her) previously purchased an optional rider. These bills limit the health care choices that a survivor of sexual assault or incest has in the wake of this crime. Survivors whose choices are limited as proposed by these bills may suffer adverse physical, emotional, and financial consequences.

MOTION: Moved by M. Beth Kur to strongly oppose HB 4246-4247. Seconded by S. Mann Gray. Motion carried.

M. Lovik presented a summary of **SB 431-432,** which provides that insurance coverage for prescription drugs or devices approved by the USFDA for use as a contraceptive "shall not be subject to any dollar limit, co-payment, deductible, or coinsurance provision that does not apply to prescription coverage generally." (See staff report of 5/13/05). This bill is protective of survivors' right to reproductive self-determination.

MOTION: Moved by M. Beth Kur to support SB 431-432. Seconded by L. Rogers. Motion Carried.
C. Hackett Garagiola presented a summary of **SB 289,** which provides that a criminal indictment may be filed "at any time" for sex offenses listed in MCL 767.24(2), if the victim is less than 18 years of age and the perpetrator is 18 years or older at the time of the offense. (See staff report of 5/17/05).

The sex offenses listed in MCL 767.24(2) are:

- enticing a child to engage in sexually abusive activity for the purpose of producing child sexually abusive material, or producing, financing, distributing, promoting or possessing such material (MCL 750.145c);
- criminal sexual conduct (CSC) 2nd degree (MCL 750.520c);
- CSC 3rd degree (MCL 750.520d);
- CSC 4th degree (MCL 750.520e); and
- assault with intent to commit CSC (MCL 750.520g).

Current law provides that for these offenses the indictment may be filed within 10 years after the offense is committed, or by the victim's 21st birthday, whichever is later. If DNA evidence of the crime is determined to be from an unidentified individual, the indictment may be filed at any time after the offense is committed. After the individual is identified, the indictment may be filed within 10 years after the individual is identified, or by the victim's 21st birthday, whichever is later. Current law also provides that an indictment for criminal sexual conduct

1st degree may be filed at any time.

Comments and discussion: A criminal sexual conduct victim who is under age 18 at the time of the offense may be too fearful, too traumatized or otherwise unwilling or unable for many years to disclose the sexual abuse to anyone, or to participate in the prosecution of the abuser, particularly if the abuser is an adult. The current limitations on the time within which criminal indictments for the offenses listed in MCL 767.24(2) may be brought (10 years after the offense or by the victim's 21st birthday) are too short for some of these victims. If the victims do not disclose the crimes, and are not ready to participate in the prosecutions within those time limitations, their abusers cannot be prosecuted for those crimes. In those cases, these sex offenders escape accountability for their crimes. And the victims of those sex offenders are denied the opportunity, if and when they are ready, to proceed with a prosecution, which participation may be a critical aspect of the healing and recovery process for those victims.

Also, given the established likelihood of child molesters to re-offend, these sex offenders are likely to continue to sexually abuse other children/teenagers unless the criminal justice system precludes access to children/teens through imprisonment of the abuser, or otherwise restricts and/or monitors their access to children/teens.

By providing that an indictment for the sex offenses listed in MCL 767.24(2) can be brought at any time, SB 289 acknowledges that the harm that these sex offenders cause to young victims can be so severe and long-lasting that the victims cannot disclose and/or participate in a prosecution within the existing statute of limitations for these crimes. By permitting prosecution of an adult sex offender if and when the young victim is ready to participate in that prosecution, SB 286 can promote justice and healing for victims of sexual assault who were victimized as children/teens, safety for potential future victims of that sex offender, and accountability for that abuser.

Discussion that it is particularly ironic and unjust that the more severely a child/teenager has been psychologically or otherwise harmed by the sexual abuse, the longer it may take for that victim to be able to participate in a prosecution; and therefore the perpetrators who cause the most harm to these young victims benefit most from the existing statute of limitations.

Concerns about "recovered memory" can be addressed through the evidentiary and standard of proof requirements in criminal prosecutions. The concerns about recovered memory in the cases charging crimes listed in MCL 767.24(2) arguably are no greater than those concerns in the cases charging criminal sexual conduct 1st degree, for which criminal prosecutions may be brought at any time under current law, MCL 767.24(1).

MOTION: Moved by M. Beth Kur to support SB 289. Seconded by L. Rogers. Motion carried.

D. Cain and M. Lovik presented a draft **General Principle** supporting legislative actions to protect children from violent or sexually explicit materials.

MOTION: Moved by E. Sosnick to adopt the following language: "Consistent with its work to prevent occurrences of domestic and sexual violence in Michigan, the Michigan Domestic Violence Prevention & Treatment Board supports in concept legislative action to protect minors from violent or sexually explicit materials. Exposure to these materials may desensitize children to the trauma of violence and sexual assault, and contributes to a cultural climate in which violence and sexual assault are acceptable." Seconded by S. Mann Gray. Motion carried.

D. Cain and M. Lovik presented a draft **General Principle** supporting legislative actions to protect children from sex offenders.

MOTION: Moved by E. Sosnick to adopt the following language: "Consistent with its work to prevent occurrences of sexual violence in Michigan, the Michigan Domestic Violence Prevention & Treatment Board supports in concept legislative action to protect minors from sex offenders. The Board is cognizant of the need to protect minors from sex offenders who may be strangers, and also recognizes that the majority child victims of sexual assault are assaulted by sex offenders who are family members, friends, or acquaintances." Seconded by M. Beth Kur. Motion carried.

M. Lovik presented a summary of **HB 4741 and 4775,** which would protect health care providers and facilities with conscientious objections to providing or participating in certain health care services on ethical, moral, or religious grounds. (See staff report of 5/13/05).

Comments and concerns:

a) These bills may be contrary to medical ethical standards governing patient autonomy in making informed choices about treatment options. This infringement of patient autonomy in the area of reproductive health is particularly damaging to survivors of incest, sexual assault, and domestic violence, whose need to exercise of control over their own reproductive health in order to begin healing from the physical and psychological effects of abuse.
b) Regarding contraception, these bills potentially infringe upon the individuals right to reproductive self-determination.
c) Regarding abortion, these bills are duplicative of existing law.
d) These bills are duplicative of existing policy at many health care facilities.
e) A position of neutrality would be appropriate in the event that reproductive health issues are removed from the bill. The bill's application to procedures such as stem cell research, in vitro fertilization, cloning, etc. is beyond the purview of the MDVPTB.

Motion: Moved by S. Mann Gray to oppose HB 4741 and 4775 as written. Seconded by E. Sosnick. Motion carried.

D. Cain and M. Lovik presented a draft **General Principle** supporting tort relief for victims of domestic and sexual violence crimes. Further discussion was tabled until the September meeting. L. Rogers and E. Sosnick will work with M.Lovik to discuss language.

D. Cain and M. Lovik presented a draft **General Principle** supporting economic justice of survivors of domestic and sexual violence.

MOTION: Moved by M. Beth Kur to approve the following language: "Recognizing that batterers often use economic means as a mechanism of control over their victims, survivors of domestic and sexual violence and their children need adequate economic resources and economic stability in order to achieve safety and autonomy. Accordingly, the MDVPTB supports legislation that removes obstacles survivors face as they seek to achieve economic independence. Seconded by S. Mann Gray. Motion carried.

C. Hackett Garagiola presented a summary of **SB 129 and HB 4619**, which would prohibit persons convicted of sex offenses against a child from residing within 1 mile of a school or entering upon school property as a condition of probation or parole, and provide a minimum term of probation or parole. There is no written staff report at this time.

Tabled until September Board meeting. Concerns taken under advisement:

a) Sex offender treatment takes time and periods of probation or parole should be long enough to account for this.
b) The bills make no distinction between acts of "sodomy" that are forced and consensual acts. This does a disservice to survivors of forced sodomy. Moreover, sodomy is only relevant in the context of this bill if it is also criminal sexual conduct, and sodomy of that nature is already covered in the

Criminal Sexual Conduct Act – sodomy is not a sexual assault in and of itself.

MOTION: Moved by L. Rogers to recommend that reference to sodomy be removed from SB 129 and HB 4619. Seconded by S. Mann Gray. Motion carried.

Brief discussion of **HB 4042, 4643, 4650 and SB 374-5**, various firearms bills. No written staff analysis at this time. Board will take under advisement until more information is provided.

M. Lovik reviewed list of bills on staff "watch" list, which are summarized in a memorandum of 5/18/05. The Board corrected this memorandum's discussion of SB 286 (requiring background checks for dating service participants) as follows: "board has expressed no desire to take a position on this bill."

The Board discussed a package of bills that would limit the availability of preliminary examinations in felony cases. (No written staff analysis at this time). These bills are (identical House and Senate bills are listed together): **HB 4799/SB 542**; **HB 4797/SB 543; HB 4800/SB 545.** The Board is concerned that it has not been consulted to weigh in on the potential effects of these bills on MDVPTB constituents. These bills could potentially negatively affect prosecutions of domestic and sexual assault crimes if they take away an opportunity for prosecutors to prepare witnesses for trial, and to preserve testimony taken under cross-examination prior to trial. However, elimination of the preliminary examination could have potential benefits for survivors who do not wish to testify two times.

MOTION: Moved by M. Beth Kur to oppose the bills as written, and suggest a workgroup to study the questions these bills present for victims of domestic and sexual assault. Seconded by L. Rogers. Motion carried.

C. Hackett Garagiola presented a summary of **SB 263**, creating a hearsay exception for statements to police officers, as well as a domestic violence exception to MRE 404 (other acts evidence rule). See staff report of 5/8/05. The provisions of SB 263 that create the domestic violence exception to MRE 404 (other acts evidence rule) are substantially similar to those of SB 120, which was analyzed by staff in a memo dated 2/14/05. With regard to the domestic violence hearsay exception created in SB 263, the bill provides that evidence of a statement by a declarant is not inadmissible as hearsay if all of the following apply.

a) The statement purports to narrate, describe or explain the infliction or threat of physical injury upon the declarant.
b) The action in which the evidence is offered is an offense involving domestic violence.
c) The statement was made at or near the time of the infliction or threat of physical injury. Evidence of a statement made more than five years before the filing of the current action or proceeding is inadmissible under the domestic violence hearsay exception.
d) The statement was made under circumstances that would indicate the statement's trustworthiness.
e) The statement was made in writing, was electronically recorded, or was made to a law enforcement official.

SB 263 provides that circumstances relevant to the issue of trustworthiness include, but are not limited to, all of the following.

a) Whether the statement was made in contemplation of pending or anticipated litigation in which the declarant was interested.
b) Whether the declarant has a bias or motive for fabricating the statement, and the extent of any bias or motive.
c) Whether the statement is corroborated by evidence other than statements that are admissible only under the domestic violence hearsay exception.

Comments: Consider the effect of *Crawford v Washington* on this bill. Consider the effect of this bill (or non-

effect) on a description of a crime made to a hospital social worker. MDVPTB will take this bill under advisement and staff will keep the Board apprised of its progress.

PUBLIC COMMENT
None.

PROCESS EVALUATION
None.

ADJOURNMENT

The meeting ended at 2:30 p.m.

MOTION: Moved by S. Mann Gray to adjourn the meeting. Seconded by L. Rogers. Motion carried.

Respectfully submitted,
Josie Jubb